

UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF DELAWARE

MICHELE FANEAN,

PLAINTIFF,

v.

RITE AID CORPORATION OF
DELAWARE, INC.,

DEFENDANT.

C.A. NO.

NOTICE OF REMOVAL TO FEDERAL COURT PURSUANT TO 28 U.S.C. § 1446

TO: The Honorable Judges of the United States District Court
In and For the District of Delaware
844 N. King Street
Room 4209
Lock Box 18
Wilmington, DE 19801

Defendant Rite Aid Corporation of Delaware, Inc., by and through its attorney respectfully aver as follows:

1. Plaintiff originally commenced a civil action against Rite Aid Corporation in the Superior Court of Delaware in and for New Castle County. See original Complaint attached hereto as Exhibit "A".

2. The Complaint, being the original process in this case was served on Rite Aid Corporation as of August 12, 2008. See Exhibit "B".

3. On August 25, 2008, an Amended Complaint was filed by the plaintiff naming a separate corporate entity, Rite Aid Corporation of Delaware, Inc. as the appropriate party defendant. See Exhibit "C".

4. Accordingly, this Notice of Removal was timely filed within thirty (30) days of

both the initial pleading being served against Defendant Rite Aid Corporation as well as within thirty (30) days of the e-filing of an Amended Complaint against Rite Aid Corporation of Delaware, Inc. See 28 U.S.C. § 1446 (b).

5. In the Amended Complaint, it is averred that defendant acted through an agent, servant or employee revealed personal, private, sensitive and highly confidential medical details in violation of the Health Information Privacy Act found at 42 U.S.C. § 1320 et. Seq. (HIPAA).

6. It furthermore goes on to aver that violation of HIPAA constitutes negligence per se.

7. Congress in creating HIPAA did not provide for private enforcement of the statute, limiting same, to the Secretary of Health and Human Services. See 42 U.S.C. § 1320(d-1,d-5, d-6). Congress has preempted the field relative to a cause of action stemming from a violation of HIPAA.

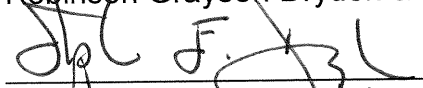
8. As such, the instant matter poses a federal question in accordance with 28 U.S.C. § 1331 setting forth the fact that District Court shall have original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States.

9. Federal law has preempted the field specifically limiting enforcement of the statute to the Secretary of Health and Human Services.

10. Defendant Rite Aid Corporation of Delaware, Inc. is represented by the firm of Robinson, Grayson, Dryden & Ward and consents to the removal to the litigation to the United States District Court.

WHEREFORE, Defendants pray that the above captioned action now pending in the Superior Court of the State of Delaware in and for New Castle County be removed to this Honorable Court.

Robinson Grayson Dryden & Ward, P.A.

A handwritten signature in black ink, appearing to read "S.F. Dryden", is written over a horizontal line.

Stephen F. Dryden, Esquire

Bar I.D. No. 2157

910 Foulk Road, Suite 200

Wilmington, DE 19803

(302) 655-6262

Attorney for Defendant

Dated: September 2, 2008

UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF DELAWARE

MICHELE FANEAN,

PLAINTIFF,

v.

RITE AID CORPORATION OF
DELAWARE, INC.,


DEFENDANT.

C.A. NO.

CERTIFICATE OF SERVICE

I, Stephen F. Dryden, of Robinson Grayson Dryden & Ward, P.A., do hereby certify that a copy of the foregoing Notice of Removal to Federal Court Pursuant to 28 U.S. C. § 1446 was served via U.S. Mail on this 29th day of August, 2008 upon the following:

James F. Bailey, Jr., Esquire
Three Mill Road, Suite 306A
Wilmington, DE 19806

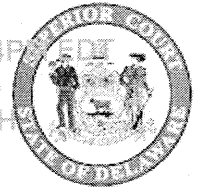


Stephen F. Dryden
Bar I.D. No. 2157

EXHIBIT

A

EFiled: Jul 17 2008 4:14PM EDT
Transaction ID 20692005
Case No. 08C-07-151 JOH



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

MICHELE FANEAN,

Plaintiff,

v.

RITE AID CORPORATION,

Defendant.

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C.A. NO.:

TRIAL BY JURY OF 12 DEMANDED

COMPLAINT

1. Plaintiff is Michele Fanean, a resident of New Castle County, Delaware at all times relevant hereto.

2. The Defendant, Rite Aid Corporation, is a corporation of the State of Delaware with pharmacies located throughout the United States and, more particularly, owns and operates a store containing a pharmacy at 2713 Philadelphia Pike, Claymont, Delaware 19703. The registered agent is the Prentice-Hall Corporation System, Inc.

3. Plaintiff has been a customer of the Rite Aid Pharmacy located at 2713 Philadelphia Pike, Claymont, Delaware 19703 (the "Rite Aid Pharmacy") for a number of years. She has had prescriptions called in and filled at that location on numerous occasions.

4. In either late April or early May, 2008, an agent, servant or employee of the Rite Aid Pharmacy named Alexis Chesson, provided detailed information about medications that Plaintiff was taking as well as providing detailed information about medical conditions that she did have and does have at the present time. In addition, this information was disseminated to various members of the public including members of Plaintiff's family.

5. The information communicated by Chesson, acting as agent, servant or employee of the Rite Aid Pharmacy and Rite Aid Corporation, was personal, private, sensitive and highly confidential.

6. Revelation of the details of various medicines, prescriptions and physical conditions of the Plaintiff by the Rite Aid employee was a violation of the Health Information Privacy Act found at 42 U.S.C. §1320 et. seq. (HIPAA). Chesson acted as agent, servant or employee of Rite Aid Corporation, who is vicariously liable under the theory of respondeat superior knowingly obtained and disclosed individually identifiable health information in violation of the act otherwise known as The Administrative Simplification Regulations as well as the Health Insurance Portability and Accountability Act of 1996.

7. Violation of HIPAA and its attendant regulations constitutes negligence per se. The violation of HIPAA and its attendant regulations Defendant proximately and directly caused damages to the Plaintiff. Those damages include, but are not limited to, emotional distress, embarrassment, public humiliation, psychological stress and other related damages.

8. The actions of the Defendant, acting through its agents, servants or employees constitutes, inter alia, negligent and/or intentional infliction of emotional distress directly and proximately causing damage to Plaintiff. The medical information and records communicated by Rite Aid through Chesson was provided to third parties without consent of the Plaintiff.

WHEREFORE, Plaintiff demands judgment against Defendant along with an award of prejudgment and post-judgment interests, costs and attorneys' fees.

THE BAILEY LAW FIRM

/s/ James F. Bailey, Jr.

JAMES F. BAILEY, JR., ESQUIRE

Bar I.D. # 336

Email: jbailey@jfbailey.com

Three Mill Road, Suite 306A

Wilmington, DE 19806

(302) 658-5686

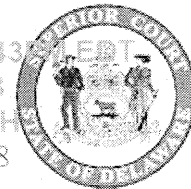
Attorney for Plaintiff

Date: July 17, 2008

EXHIBIT

B

EFiled: Aug 26 2008 4:43 PM EDT
Transaction ID 21240113
Case No. 08C-07-151 JOH
August 13, 2008



OFFICE OF THE SHERIFF

Served: RITE AID CORPORATION

By serving their R/A PHCS INC. by delivering a copy of the within writ together with a copy of the Summons and Complaint to MARY DRUMMOND, of the said registered agent on 8/12/2008 at 11:18AM.

Fees Paid: \$30.00

Civil Action # 08C-07-151
Per: Deputy Sheriff, Clarence Everett

SO ANS;
SHERIFF

A handwritten signature in black ink, appearing to read "Michael P. Wolf", is written over the typed name "SHERIFF".

WRIT RET. 8-14-08

PER Doreen Simmons

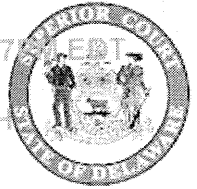
Document # 08013918

2008 AUG 14 PM 14:31
CLERK OF COURT
DELAWARE

EXHIBIT

C

EFiled: Aug 25 2008 4:47 PM EDT
Transaction ID 21219026
Case No. 08C-07-151 JOH



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

MICHELE FANEAN,

Plaintiff,

v.

RITE AID CORPORATION OF
DELAWARE, INC.,

Defendant.

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C.A. NO.: 08C-07-151 JOH

TRIAL BY JURY OF 12 DEMANDED

AMENDED COMPLAINT

1. Plaintiff is Michele Fanean, a resident of New Castle County, Delaware at all times relevant hereto.

2. The Defendant, Rite Aid Corporation of Delaware, Inc., is a corporation of the State of Delaware with pharmacies located throughout the United States and, more particularly, owns and operates a store containing a pharmacy at 2713 Philadelphia Pike, Claymont, Delaware 19703. The registered agent is the Prentice-Hall Corporation System, Inc.

3. Plaintiff has been a customer of the Rite Aid Pharmacy located at 2713 Philadelphia Pike, Claymont, Delaware 19703 (the "Rite Aid Pharmacy") for a number of years. She has had prescriptions called in and filled at that location on numerous occasions.

4. In either late April or early May, 2008, an agent, servant or employee of the Rite Aid Pharmacy named Alexis Chessen, provided detailed information about medications that Plaintiff was taking as well as providing detailed information about medical conditions that she did have and does have at the present time. In addition, this information was disseminated to various members of the public including members of Plaintiff's family.

5. The information communicated by Chessen, acting as agent, servant or employee of the Rite Aid Pharmacy and Rite Aid Corporation of Delaware, Inc., was personal, private, sensitive and highly confidential.

6. Revelation of the details of various medicines, prescriptions and physical conditions of the Plaintiff by the Rite Aid employee was a violation of the Health Information Privacy Act found at 42 U.S.C. §1320 et. seq. (HIPAA). Chessen acted as agent, servant or employee of Rite Aid Corporation of Delaware, Inc., who is vicariously liable under the theory of respondeat superior knowingly obtained and disclosed individually identifiable health information in violation of the act otherwise known as The Administrative Simplification Regulations as well as the Health Insurance Portability and Accountability Act of 1996.

7. Violation of HIPAA and its attendant regulations constitutes negligence per se. The violation of HIPAA and its attendant regulations Defendant proximately and directly caused damages to the Plaintiff. Those damages include, but are not limited to, emotional distress, embarrassment, public humiliation, psychological stress and other related damages.

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WHEREFORE, Plaintiff demands judgment against Defendant along with an award of prejudgment and post-judgment interests, costs and attorneys' fees.

THE BAILEY LAW FIRM

/s/ James F. Bailey, Jr.
JAMES F. BAILEY, JR., ESQUIRE
Bar I.D. # 336
Email: jbailey@jfbailey.com
Three Mill Road, Suite 306A
Wilmington, DE 19806
(302) 658-5686
Attorney for Plaintiff

Date: August 25, 2008

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS Michele Fanean (b) County of Residence of First Listed Plaintiff <u>New Castle</u> (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorney's (Firm Name, Address, and Telephone Number) James F. Bailey, Jr., Esquire, Three Mill Road, Suite 306A Wilmington, DE 19806 (302) 658-5686	DEFENDANTS Rite Aid Corporation of Delaware, Inc. County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known) Stephen F. Dryden, Esquire - 910 Foulk Road, Suite 200, Wilmington, DE 19803 (302) 655-6262																		
II. BASIS OF JURISDICTION (Place an "X" in One Box Only) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only) <table style="width:100%;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:10%;"><input type="checkbox"/> 1</td> <td style="width:10%;"><input type="checkbox"/> 1</td> <td style="width:33%;">Incorporated or Principal Place of Business In This State</td> <td style="width:10%;"><input type="checkbox"/> 4</td> <td style="width:10%;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4														
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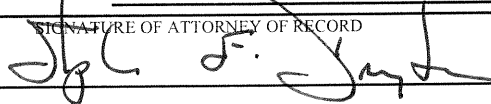
IV. NATURE OF SUIT (Place an "X" in One Box Only)						
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	TORTS <table style="width:100%;"> <tr> <td style="width:50%; vertical-align: top;"> PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury </td> <td style="width:50%; vertical-align: top;"> PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability </td> </tr> </table>	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. 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Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability					
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition				

V. ORIGIN (Place an "X" in One Box Only)							Appeal to District Judge from Magistrate Judgment
<input type="checkbox"/> 1 Original Proceeding	<input checked="" type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7	

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>42 U.S.C. Section 1320</u>		
	Brief description of cause: <u>Preemption of attempt to site HIPAA as basis for private cause of action</u>		

VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ _____	CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY	(See instructions):	JUDGE <u>Jermome O. Herlihy</u>	DOCKET NUMBER <u>08C-07-151 JOH</u>
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DATE <u>8-29-08</u>	SIGNATURE OF ATTORNEY OF RECORD 
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FOR OFFICE USE ONLY	RECEIPT # _____	AMOUNT _____	APPLYING IFP _____	JUDGE _____	MAG. JUDGE _____
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AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware

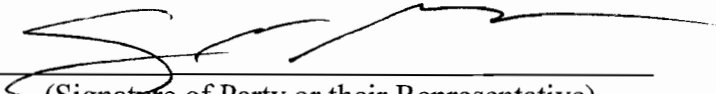
Civil Action No. 08 - 553

ACKNOWLEDGMENT
OF RECEIPT FOR AO FORM 85

NOTICE OF AVAILABILITY OF A
UNITED STATES MAGISTRATE JUDGE
TO EXERCISE JURISDICTION

I HEREBY ACKNOWLEDGE RECEIPT OF 1 COPIES OF AO FORM 85.

8/29/08
(Date forms issued)


(Signature of Party or their Representative)

Sean McCollam
(Printed name of Party or their Representative)

Note: Completed receipt will be filed in the Civil Action